FILED

In the Supreme Court of the United States

October Term, 1972

THE CALIFORNIA BANKERS ASSOCIATION, APPELLANT

v.

GEORGE P. SHULTZ, SECRETARY OF THE TREASURY, ET AL.

FORTNEY H. STARK, JR., ET AL., APPELLANTS

v.

GEORGE P. SHULTZ, SECRETARY OF THE TREASURY, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

REPLY TO APPEAL

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-985

THE CALIFORNIA BANKERS ASSOCIATION, APPELLANT

v.

GEORGE P. SHULTZ, SECRETARY OF THE TREASURY, ET AL.

No. 72-1196

FORTNEY H. STARK, JR., ET AL., APPELLANTS

v.

GEORGE P. SHULTZ, SECRETARY OF THE TREASURY, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

MOTION TO AFFIRM

Pursuant to Rule 16(1) of the Rules of this Court, the appellees, the Secretary of the Treasury and other named officials of the United States, move that the portion of the order of the district court from which the appeal is taken be affirmed.

STATEMENT

This is a direct appeal from a preliminary injunction denying appellants' motion against enforcement of the financial recordkeeping and foreign transactions reporting provisions of the Act of October 26, 1970, P.L. 91-508, 84 Stat. 1114 (popularly known as the Bank Secrecy Act), and the implementing Treasury Regulations.[1] Appellant in No. 72-985 (hereafter CBA J.S.), The California Bankers Association, is an association of all state and national banks doing business in the State of California (CBA J.S. App. 42). Appellants in No. 72-1196 (hereafter ACLU J.S.) consist of one national bank, its president, a bank customer, and several individuals who intend to engage in foreign financial transactions reportable under the Bank Secrecy Act and who maintain interests in or signature authority over foreign bank accounts (ACLU J.S. 8, n. 8).

On June 7 and 22, 1972, a few days before the regulations implementing the Act were scheduled to go into effect, appellants brought these actions alleging violations of various constitutional provisions and requesting declaratory and injunctive relief. A three-judge court was convened pursuant to 28 U.S.C. 2282 to hear and decide the constitutional issues raised by the complaints. The district court held, one judge dissenting, that the domestic currency transaction reporting requirements of Chapter 2 of Title II and the Regulations thereunder are invalid under the

[1] Treasury Regulations on Financial Recordkeeping and Reporting of Currency and Foreign Transactions (31 C.F.R., Part 103).

Fourth Amendment as an overly broad intrusion into financial privacy (CBA J.S. App. 46–58) and issued a preliminary injunction forbidding the defendants from enforcing such provisions nationwide (CBA J.S. App. 61–63). The district court unanimously sustained the constitutionality of Title I and all other portions of Title II and the Regulations (CBA J.S. App. 44–46) and denied the injunctive relief sought with respect to such provisions (CBA J.S. App. 62–63). The present appeals challenge this order insofar as it denied the requested relief.[2]

ARGUMENT

The opinion and order of the district court denying a preliminary injunction to restrain the operation and enforcement of the provisions of the Bank Secrecy Act here challenged are correct, and this case presents no substantial issue warranting plenary consideration by this Court.

I. TITLE I OF THE BANK SECRECY ACT IS NOT UNCONSTITUTIONAL

Title I of the Bank Secrecy Act authorizes the Secretary of the Treasury to require banks and other

[2] The Secretary of the Treasury and the other named defendants have filed a direct appeal from the same order of the three-judge district court insofar as it granted a preliminary injunction against enforcement of certain provisions of Title II of the Bank Secrecy Act and the Treasury Regulations implementing such provisions. *George P. Shultz, Secretary of the Treasury, and All other Defendants in the District Court, Appellants* v. *The California Bankers Association, Fortney H. Stark, Jr., et al.*, No. 72–1073.

financial institutions to maintain records of the identity of their customers, together with microfilm copies of various financial instruments, such as checks drawn and presented for payment. The declared purpose of Title I of the Act is to "require the maintenance of appropriate types of records * * * where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." Sec. 101 (12 U.S.C. 1829b(a)(2)) and Sec. 121(b) (12 U.S.C. 1951(b)). Section 101 requires banks subject to the Federal Deposit Insurance Act to maintain certain records and authorizes the Secretary of the Treasury to prescribe record retention periods of up to six years. Sections 122 and 123 (12 U.S.C. 1952, 1953) authorize the Secretary to issue Regulations requiring the maintenance of similar records in the case of other domestic financial institutions, and to require reports as to their ownership, management, and control. In the case of insured banks, the administrative and enforcement provisions of the Federal Deposit Insurance Act are applicable. Title I itself contains other provisions applicable to non-insured institutions, for the administration and enforcement of the records maintenance and retention statutes, including provisions for injunctions (Sec. 124 (12 U.S.C. 1954)), and civil and criminal penalties (Secs. 125–127 (12 U.S.C. 1955–1957)).

The Treasury Regulations implementing the Title I recordkeeping statutes require all financial institutions to maintain records of extensions of credit [3] in

[3] An exception is made if the extension of credit is secured by an interest in real property.

excess of $5,000, and transfers of currency, other monetary instruments, checks, investments securities or credit of more than $10,000 to persons, accounts or places outside the United States. 31 C.F.R. 103.33. The Regulations also require insured banks to maintain records or copies thereof of a somewhat larger number and type. It is required that the banks secure and maintain a record of the taxpayer identification or social security number of customers having deposit or share accounts. The principal type of record of which microfilm or other copies must be maintained is checks, drafts and money orders drawn on the bank or issued and payable by it.[4] Excluded from this requirement are dividend, pay-

[4] Other records of which insured banks are required to maintain microfilm or other copies are (1) documents granting signature authority over accounts; (2) statements or ledger cards showing all transactions in or with respect to each account; (3) items (other than bank charges) comprising debits to accounts; (4) items of more than $10,000 transmitted or remitted to persons, accounts or places outside of the United States; (5) records of remittances and transfers of funds, currency, other monetary instruments, checks, investment securities or credit of more than $10,000 to persons, accounts or places outside the United States; (6) checks and drafts of foreign banks in excess of $10,000 purchased, received for credit or collection or otherwise acquired; (7) items of more than $10,000 received from a person, account or place outside the United States; (8) records of receipts of currency, other monetary instruments, checks and investment securities and transfers of funds or credit in excess of $10,000 from persons, accounts or places outside the United States, and (9) records necessary to reconstruct a demand deposit account and to describe deposited checks or trace such items through its domestic processing system. 31 C.F.R. 103.34. Records of the last category are to be retained two years, and all others for a period of five years. 31 C.F.R. 103.36(c).

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roll, employee benefit, insurance claim, medical benefit, pension and annuity checks if the account averages at least 100 checks per month; checks drawn on accounts of government agencies, securities brokers and dealers, fiduciaries, and financial institutions (31 C.F.R. 103.34(b)(3); and all checks of $100 or less (§ 103.34(b)(3), (10) of the amended Regulations [5]) (G. J.S. App.[6] 116, 118).

The jurisdictional statements essentially raise three separate challenges to these recordkeeping provisions of Title I.

1. THE CALIFORNIA BANKERS ASSOCIATION (NO. 72-985)

The California Bankers Association (CBA) is "an unincorporated association consisting of 158 state and national banks doing business in the State of California" (G. J.S. App. 26). CBA alleges that the recordkeeping requirements of Title I of the Act "violate the Fourth Amendment guarantee against unreasonable search and seizure" and that these requirements "confiscate a bank asset—the assurance of customer privacy—without due process of law" (CBA J.S. 2–3). This claim is joined in by the Security National Bank, and its president Fortney H. Stark, Jr. (G. J.S. App. 37–38), who are among the appellants who have joined the ACLU Jurisdictional Statement (No. 72–1196).

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[5] The amended Regulations were promulgated on January 22, 1973, after the decision below was handed down (38 Fed. Reg. 2174).

[6] "G. J.S." refers to the jurisdictional statement filed by the Secretary of the Treasury and the other named defendants (No. 72–1073).

These claims are premature and without merit. Title I and the regulations promulgated by the Secretary do not compel disclosure of any records kept by the banks; they only require banks to make and retain certain records. Sec. 103.51 of the amended Regulations (G. J.S. App. 119); H. Rep. No. 91-975, 91st Cong. 2d Sess., p. 10). The Fourth Amendment, "if applicable" at all to corporations, protects only against "unreasonable" demands for *"disclosure"* of records (*Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 208; *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652–653). Since no compelled disclosure—indeed, no disclosure of any kind—is involved here, there is no basis for the assertion by the banks of any Fourth Amendment claim. See *Isbrandtsen-Moller Co.* v. *United States*, 300 U.S. 139, 145. "[T]he federal courts established pursuant to Article III of the Constitution do not render advisory opinions." *United Public Workers* v. *Mitchell*, 330 U.S. 75, 89.

Contrary to appellants' suggestion, there is no basis for the claim that the recordkeeping requirements of Title I are unreasonable:

> [C]orporations can claim no equality with individuals in the enjoyment of a right of privacy. * * * They are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege of acting as artificial entities. The Federal Government allows them the privilege of engaging in interstate commerce. Favors from government often carry with them an enhanced measure of regulation. [*United States* v. *Morton Salt Co., supra*, 338 U.S. at 652.]

While "[i]t may be assumed * * * that there are limits which the Government cannot constitutionally exceed in requiring the keeping of records which may be inspected by an administrative agency * * * those bounds have [not] been overstepped * * * when there is a sufficient relation between the activity sought to be regulated and the public concern so that the Government can constitutionally regulate or forbid the basic activity concerned, and can constitutionally require the keeping of particular records, subject to inspection by the Administrator." *Shapiro* v. *United States*, 335 U.S. 1, 32.

The "basic activity" regulated here—commercial banking transactions—is one which is affected with a public interest and subject to substantial regulation under numerous constitutional powers, including the Commerce Clause. Congress plainly has the authority to provide for the retention of records of those transactions to insure that the channels of interstate commerce are employed in a manner which will facilitate rather than jeopardize or hinder the enforcement of tax and criminal laws, and as part of its power to do all things necessary and proper to provide for the enforcement of federal criminal, tax and regulatory laws.[7]

[7] The actual burden on the banks despite exaggerated and unsubstantiated claims is hardly "staggering" (ACLU J.S. 15). Appellants do not challenge the congressional finding that most of the records affected by the statute have been maintained by financial institutions in any event (H. Rep. No. 91-975, *supra*, pp. 10-11; S. Rep. No. 91-1139, 91st Cong., 2d Sess., p. 5) and nothing in the record here supports a contrary finding. The only concrete evidence submitted by the appellants relates to costs incurred by the Bank of America, whose cost of compliance with Title I in 1971 was said to be $392,000 (ACLU J.S.

Appellants' claim that Congress is without power to compel the keeping of records which may be used for purposes other than the regulation of the recordkeeper's own business (ACLU J.S. 16) is unsupported by any authority. Numerous provisions of the Internal Revenue Code and the Treasury Regulations thereunder require financial institutions and other third parties to maintain records of the financial transactions of their customers, employees, and others with whom they deal.[8] *Marchetti* v. *United States*, 390 U.S. 39, 57, upon which appellants rely (ACLU J.S. 16, n. 12) is inapposite. That case dealt with the circumstances under which Congress could compel the production of information which would incriminate the recordkeeper. See *Minor* v. *United States*, 396 U.S. 87, 92. The limitations prescribed in *Marchetti* have no application where, as here, the recordkeeper, a corporate entity, could not under any circumstances invoke the privilege against self-incrimination.[9]

2. THE BANK CUSTOMERS (ACLU J.S. NO. 72–1196)

Appellant Charles Marson claims to be a customer of the Bank of America, and appellant Fortney Stark, Jr., in addition to being President of the Security

11). The Bank of America, however, is one of the largest banks in the United States with 997 branches and a *net* income of $178,400,000. Moody's *Bank and Finance Manual* (1972), pp. 633–634. Accepting these figures as illustrative of the general impact on other banks, the tax deductable expense of compliance is not unreasonable.

[8] A summary of many of these statutes and regulations is set out in Appendix A, *infra*, pp. 25–26.

[9] Since banking is an enterprise subject to the broad regulatory powers of Congress, there is likewise no basis for the claim

National Bank, also alleges that he is a bank customer. Both alleged in the complaint (to the extent here pertinent) that the recordkeeping requirements of Title I violate their "right to be free from unreasonable searches and seizures under the Fourth Amendment" (G. J.S. App. 33–34, 40).

The appellants apparently recognize that these claims (like those asserted by the CBA and the Security National Bank) are premature since the challenged provisions of Title I do not compel disclosure but merely require the banks to keep records of information obtained from depositors.[10] Appellants argue, however, that "at least with respect to records * * * [which banks] would not otherwise make or keep," the banks must be regarded as "agents" of the government when they compile records pursuant to the direction of the Act or when they retain such records "past the time dictated by sound business practice." Accordingly, appellants argue, without citation of authority, an illegal "seizure" takes place every time the bank makes or retains a record under the compulsion of the Act (ACLU J.S. 17–19, 22).

Even if it were assumed *arguendo* that in these circumstances the banks are accurately characterized as "agents" of the government, a "seizure" does not

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of the individual appellants, that if the Bank Secrecy Act is sustained, "all citizens" could be included in "the government's surveillance corps" and compelled to "keep watch" on other citizens (ACLU J.S. 16).

[10] The bank records required by Title I are, however, no more available to government officials than bank records generally under ordinary internal revenue summons practice.

occur, within the meaning of the Fourth Amendment, when an agent of the government makes a record of information voluntarily disclosed to him. On the contrary, this Court has held that "the Fourth Amendment cannot be translated into a general constitutional 'right of privacy'" (*Katz* v. *United States*, 389 U.S. 347, 350) and that the recording of information voluntarily disclosed to others, even when a citizen is not aware that the disclosure is being made to a government agent, does not violate the Fourth Amendment. *United States* v. *White*, 401 U.S. 745, 749; *Hoffa* v. *United States*, 385 U.S. 293; *Lewis* v. *United States*, 385 U.S. 206.

Moreover, even in a case actually involving an otherwise valid subpoena or internal revenue summons to compel a bank to disclose records kept pursuant to Title I, there would be no basis for a claim by the bank's customers under the Fourth or Fifth Amendments since the compulsory process would be directed to the bank rather than the customers and the records sought would belong to and be in the possession of the bank. *Couch* v. *United States*, No. 71–889, decided January 9, 1973. Appellants' argument that a subpoena directed toward such records violates their constitutional rights can be sustained only if the Constitution can be deemed to create a "bank-customer" privilege, which would bar disclosure by the bank of information disclosed by a customer to the bank, without regard to whether the information was kept pursuant to statutory direction or for the convenience of the bank. But the Constitution does not require any such

privilege. As the Court held in *Branzburg* v. *Hayes*, 408 U.S. 665, 682:

> Citizens generally are not constitutionally immune from grand jury subpœnas; and neither the First Amendment nor any other constitutional provision protects the average citizen from disclosing to a grand jury information that he has received in confidence.[11]

Appellee's reliance upon *Griswold* v. *Connecticut*, 381 U.S. 479, and *Roe* v. *Wade*, No. 70–18, decided January 22, 1973, for the proposition that a customer's communications with his bank are protected by "a constitutional right of privacy [which] exists independent of the Fourth Amendment" (ACLU J.S. 21), is misplaced. Stated most comprehensively, the proposition for which these cases stand is that without a compelling interest a state may not interfere with an individual's "freedom of choice in the basic decisions

[11] Of the three cases cited by appellants in regard to the privacy of financial affairs, one—*Peterson* v. *Idaho First National Bank*, 83 Idaho 578, 367 P. 2d 284—involved a bank's disclosure of its customer's finances to a private third party, and the court recognized (83 Idaho at 587–588, 367 P. 2d at 290) that the State would be entitled to disclosure if the information were sought pursuant to valid legal process. The other two cases—*Brex* v. *Smith*, 104 N.J. Eq. 386, 146 Atl. 34, and *City of Carmel-by-the-Sea* v. *Young*, 2 Cal. 3d 259, 466 P. 2d 225—involve traditional Fourth Amendment questions: in the former, whether a public prosecutor had the legal authority to demand that the bank records of public employees and their families be submitted for inspection, and in the latter whether a requirement of public disclosure by all public officials of financial interests in excess of $10,000 was an unreasonably broad intrusion into private affairs in light of the state interest asserted. Even in the *City of Carmel* case, which has the broadest language in this regard, the court specifically indicated (2 Cal. 3d at 272, 466 P. 2d at 234) that such affairs would not be immune from disclosure under a properly drawn statute.

of one's life respecting marriage, divorce, procreation, contraception, and the education and upbringing of children" (*Roe* v. *Wade, supra,* slip op. 3, Douglas, J. concurring). These cases and similar holdings are wholly inapposite here.

Finally, there is no basis for appellants' claim that if the constitutionality of Title I is sustained, Congress could, "[a]s soon as the technology is developed," compel telephone companies to tape record and save telephone conversations for subsequent use pursuant to legal process (ACLU J.S. 20). The two situations are not comparable. The telephone company is not a party to a telephone conversation and the disclosure of the conversation to the telephone company and its employees is not necessary in order to facilitate the transmission of the communication. In these circumstances, a party to a conversation has a reasonable expectation that his conversation will not be "seized" by any third party. *Katz* v. *United States,* 389 U.S. 347, 352. Here on the other hand the disclosure of information to the bank, its employees, and others is made voluntarily by the customer. Such disclosure is essential to the services rendered by the bank, and so is the recording and retention of much of the information disclosed. There is, as we have shown, no basis for the assertion of any Fourth Amendment claim in these circumstances.

3. THE AMERICAN CIVIL LIBERTIES UNION (ACLU J.S. NO. 72-1196)

The ACLU alleges that the provisions of Title I have a "chilling effect" on the exercise of "the First Amendment's right of association" (ACLU J.S. 22).

The basis of this claim is that most ACLU members pay their dues "in the form of checks drawn on banks in California, throughout the United States and even in foreign countries" (ACLU J.S. 22). The ACLU claims that Title I of the Act, and the regulation promulgated thereunder, which require these banks to retain either the original or a copy of checks drawn by depositors "in excess of $100" (31 C.F.R. 103.34 (4); G. J.S. App. 117), would "likely" cause a person to "hesitate" before making a contribution to it (ACLU J.S. 22).[13]

The claim asserted by the ACLU, resting as it does on "allegations of a subjective 'chill' " on the exercise of First Amendment rights (*Laird* v. *Tatum*, 408 U.S. 1, 13), is insufficient to invoke the jurisdiction of a federal court. In *Laird* v. *Tatum*, *supra*, the Court held that "the jurisdiction of a federal court may [not] be invoked by a complainant who alleges that the exercise of his First Amendment rights is being chilled by the mere existence, without more, of a governmental investigative and data-gathering activity that is alleged to be broader in scope than is reasonably necessary for the accomplishment of a valid governmental

[13] This claim was not asserted in the complaint. The ACLU alleged in its complaint that *it* maintained accounts in various California banks (G. J.S. App. 38) and claimed that the authority delegated to the Secretary was so broad that he *could* promulgate regulations which would make it impossible for the *ACLU* to "reasonably and effectively maintain the anonymity of its members and contributors" (G. J.S. App. 39). This claim has now been abandoned in favor of a claim that the ACLU is being injured because most of its members pay by check, desire anonymity, and will "hesitate" to contribute to the ACLU if they know that *their* banks keep records.

purpose" (408 U.S. at 10). "Allegations of a subjective 'chill,'" the Court held, "are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm; 'the federal courts established pursuant to Article III of the Constitution do not render advisory opinions'" (408 U.S. at 15).

The claim here, as in *Tatum*, rests simply on the inadequate allegation that the exercise of First Amendment rights "is being chilled by the mere existence without more, of a governmental investigative and data-gathering activity" (408 U.S. at 10). There is no "claim of specific present *objective* harm or a threat of specific future harm" to any ACLU member (408 U.S. at 15, emphasis added); nor is any member "either presently or prospectively subject to the regulations, proscriptions, or compulsions" of Title I being challenged (408 U.S. at 11). The holding in *Laird* v. *Tatum, supra*, would therefore preclude a suit by an ACLU member seeking to challenge the provisions of Title I, and the ACLU Jurisdictional Statement has apparently abandoned such a challenge on behalf of the individual appellees, Stark and Marson (G. J.S. App. 39). Since the ACLU's standing to raise this First Amendment claim is essentially derivative (*NAACP* v. *Alabama*, 357 U.S. 449, 458–459) it likewise lacks standing to challenge the Act.[13]

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[13] Even assuming standing to challenge the Act on First Amendment grounds, we submit that the ACLU's claims are without merit. Unlike cases such as *NAACP* v. *Alabama*, 357 U.S. 449, this is not a case in which the membership list of an organization is sought, nor could such disclosure possibly result from the operation of the provisions of the Act—barring an

II. TITLE II OF THE BANK SECRECY ACT IS NOT UNCONSTITUTIONAL

Title II of the Bank Secrecy Act (Currency and Foreign Transactions Reporting Act) has the same declared purpose as Title I, Sec. 202 (31 U.S.C. 1051). Chapter 3 of Title II (Secs. 231–235 (31 U.S.C. 1101–1105)),[14] requires persons to report transportations of monetary instruments into or out of the United States, or receipts of such instruments in the United States from places outside the United States, if the transportation or receipt involves more than $5,000. It also provides that the reports must indicate the legal

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examination of every microfilmed check drawn by every bank customer in the United States. Indeed, even such an exercise would be unavailing since the regulations exempt from the coverage of the Act checks issued or drawn "for $100 or less" (31 C.F.R. 103.34(b)(3); G. J.S. App. 116). Moreover, the Bank Secrecy Act does not compel any individual to disclose information regarding his political affiliation nor does it by terms compel any bank to disclose any information. Since there is no assurance that most banks would not continue to keep similar records of checks drawn or issued in excess of $100, even without the compulsion of the Act, any possible "chilling effect" of the Act on contributions to the ACLU is too remote and speculative to call into question the Act's constitutional validity.

[14] Chapter 2 of Title II, Secs. 221–223 (31 U.S.C. 1081–1083) is not involved in these appeals. It authorizes the Secretary to prescribe regulations requiring reports of currency transactions—i.e., transactions involving the payment, receipt, or transfer of United States currency or other monetary instruments—with domestic financial institutions. These provisions, which are detailed in our Jurisdictional Statement (G. J.S. 5–8), were declared unconstitutional by the district court below, and are the subject of the government's appeal in No. 72-1073.

capacity in which the person filing the report is acting with respect to such transportation, the origin, destination and route of such transportation, the identities of the persons from whom such instruments were received or to whom they are to be delivered, and the amounts and types of monetary instruments involved. The implementing Regulations (31 C.F.R. 103.23, 103.25) establish certain exemptions from the reporting provisions, such as for Federal Reserve Banks, specified routine shipments of monetary instruments by banks, and securities brokers and dealers. Form 4790, which is prescribed for making such reports, is set forth in Appendix C, *infra*, pp. 29–30.

Chapter 4 of Title II (Secs. 241–242 (31 U.S.C. 1121–1122)) authorizes the Secretary to prescribe Regulations requiring United States citizens and residents and persons in the United States and doing business therein to file reports of transactions and maintain records [15] of their relationships with foreign financial agencies. Section 241 requires that such reports show the identity of the parties to the transaction or relationship, the legal capacity in which such parties are acting, the identity of any real parties in interest for whom they may be acting, and the nature of the transaction or relationship required to be reported. The Secretary has exercised this authority by

[15] Sec. 241(b) (31 U.S.C. 1121(b)) provides that persons required to maintain records under the provisions of that Section need not produce or disclose the contents of such records except in compliance with a duly authorized summons or subpoena or as may otherwise be required by law.

requiring persons subject to the jurisdiction of the United States (other than foreign subsidiaries of United States persons) having a financial interest in, or signature or other authority over foreign financial accounts to report such relationships on their federal income tax returns (31 C.F.R. 103.24),[10] and further requiring such persons to maintain specified records with respect to such accounts for a period of five years (31 C.F.R. 103.32).

Appellants Lieberman, Harwood, Bruier and Durell challenge the foreign reporting provision of Title II and the Regulations promulgated thereunder. These appellants alleged in the complaint that they each "maintain a financial interest in and signature authority over one or more bank accounts in foreign countries" (G. J.S. App. 35), and each claimed that the provisions of Title II of the Act, which require United States citizens, residents and businessmen to report information concerning their bank accounts in foreign countries, violate their rights "to be free of unreasonable searches and seizures and rights of privacy" (G. J.S. App. 41). Appellant Lieberman also alleged in the complaint that he has "repeatedly in the recent past transported, mailed or shipped * * * one or more mandatory instruments exceeding $5,000 in value from the United States to places outside the United States and expects to have reason to do so again in the near future" (G. J.S. App. 35). He claimed that the compulsory disclosure of these trans-

[10] A copy of Form 4683 which is prescribed for this purpose is set forth in Appendix B, *infra*, pp. 27–28.

actions would violate his "right to be free of unreasonable searches and seizures and rights of privacy" (G. J.S. App. 41). These appellants did not allege that Title II violated their privilege against self-incrimination, although their Jurisdictional Statement challenges Title II on these grounds as well (ACLU J.S. 12–13). These claims are without merit.

1. The provisions of Title II were enacted by Congress principally in exercise of its plenary power under the Commerce Clause "to regulate Commerce with foreign Nations, and among the several States" (Art. I, Sec. 8, cl. 3). The power delegated to Congress over "commerce with foreign Nations" contemplates an even "broader" exercise of authority than the delegation of power to regulate interstate commerce. *Atlantic Cleaners and Dyers* v. *United States*, 286 U.S. 427, 434.

There is no doubt that under the Commerce Clause the power to regulate the conduct of those employing the channels of foreign commerce to engage in financial transactions—which extends to prohibiting such transactions altogether[17]—encompasses the authority to enact reasonable regulations intended to prevent the channels of foreign commerce from being employed for the purpose of violating United States criminal, tax and regulatory laws or for the purpose of concealing the fruits of United States criminal activity and converting those fruits into usable forms of credit. See H. Rep. No. 91-975, *supra*, pp. 10, 12–13; S. Rep. No. 91-1139, *supra*, pp. 1–4.

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[17] *Gibbons* v. *Ogden*, 9 Wheat. 1, 191–192; *Board of Trustees of the University of Illinois* v. *United States*, 289 U.S. 48, 57; *Atlantic Cleaners and Dyers* v. *United States*, 286 U.S. 427, 434.

The claim that the provisions of Title II requiring disclosure of information regarding such activities is an unreasonable search and seizure is insubstantial. The Fourth Amendment does not shield a person from keeping records and responding to inquiries that relate to activities in an area over which Congress has such broad regulatory power. As the Court held in *Shapiro* v. *United States*, 335 U.S. 1, 32–33 in rejecting a similar claim:

> It is not questioned here that Congress has constitutional authority to prescribe commodity prices as a war emergency measure, and that the licensing and recordkeeping requirements of the Price Control Act represent a legitimate exercise of that power. Accordingly, * * * the privilege which exists as to private papers cannot be maintained in relation to "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established." [Footnotes omitted.]

Accord: *Davis* v. *United States*, 328 U.S. 582, 589–590; *United States* v. *Darby*, 312 U.S. 100, 125; *Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 174–176; *Rodgers* v. *United States*, 138 F. 2d 992, 996 (C.A. 6); *Bartlett Frazier Co.* v. *Hyde*, 65 F. 2d 350, 351–352 (C.A. 7). Cf. *Isbrandtsen-Moller Co.* v. *United States*, *supra*, 300 U.S. at 145.

Moreover, there is no basis for appellants' suggestion that Title II is an unreasonable exercise of the authority granted Congress under the Commerce Clause because it requires "exposure of all" international monetary transactions in order to uncover

"a few sinister" ones (ACLU J.S. 12). Title II requires reports not of all international transactions, but only of certain transactions involving the physical transportation of monetary amounts in excess of $5,000. It is true that all persons having financial interests in foreign accounts must report that fact on their income tax return, but the information required is quite limited, consisting only of the names of the taxpayer and the nature and size of his accounts.[18]

There was ample evidence before Congress regarding the importance of these reporting and recordkeeping provisions to the enforcement of criminal, tax, and regulatory laws. The Senate Committee in charge of the bill specifically endorsed the conclusions of Justice Department officials that the reports of financial transactions would be "'of immense importance to law enforcement.'" Specifically, the Committee noted the assistance the reports would render in uncovering violations of gambling, narcotics, loan sharking, and like crimes. S. Rep. No. 91–1139, *supra*, pp. 6–7. Assistant Secretary of the Treasury Rossides testified that the reports were also needed to prevent evasion of the

[18] Form 4790, Appendix C, *infra*, pp. 29–30, requires disclosure of the fact of a reportable export or import of more than $5,000 in currency or monetary instruments, the identity of the person filing the report and persons on behalf of whom he is acting, a description of the currency or monetary instruments involved, and the method of transportation or shipment. Form 4683, Appendix B, *infra*, pp. 27–28, which is to be filed annually with a person's federal income tax return, requires a disclosure of the fact that a person maintained signature authority over, or a financial interest in, foreign accounts, and, in certain instances where the value of such financial interests exceeded $10,000, the nature of the account, the name in which it was maintained, its maximum value, and the identity of the bank.

requirements that banks report large currency deposits or withdrawals. Hearings before the House Committee on Banking and Currency on Foreign Bank Secrecy and Bank Records, 91st Cong., 1st and 2d Sess., p. 61. An official of the Department of Defense testified that the reports would assist in uncovering frauds on the armed forces. *Id.* at 138. And the Senate Committee noted that the reporting requirement would deter criminals from transporting funds into or out of the country in aid of criminal activity since it would provide a penalty for failure to report the transportations. S. Rep. No. 91–1139, *supra*, p. 7; see also Hearings before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency on Foreign Bank Secrecy, 91st Cong., 2d Sess., p. 65.

The legislative materials respecting the importance for law enforcement purposes of the foreign financial account reporting provisions are similar. The Committee Reports detail the many serious types of violations of United States laws which have been made possible through accounts in foreign banks from which United States law enforcement officials cannot obtain information or records. Violations of the securities, tax, antitrust, and currency laws of the United States were among those specifically mentioned. H. Rep. No. 91–975, *supra*, p. 12; S. Rep. No. 91–1139, *supra*, pp. 2–4, 8. The Committee concluded that without such reports and records, numerous violations of United States laws would go undetected.[19] S. Rep. No. 91–

[19] The testimony of officials of the Executive Branch similarly expressed the need for the information on foreign financial accounts. For example, Assistant Secretary of the Treasury Ros-

1139, *supra*, p. 8; H. Rep. No. 91-975, *supra*, pp. 12-13. In contrast with these important law enforcement objectives, the burden imposed by these provisions is minimal, since only limited information regarding the number, size and type of accounts is required.

2. Appellants' challenge to Title II on the grounds that it offends the Fifth Amendment's privilege against self-incrimination requires only a brief response. While we believe that the provisions of Title II are substantially different in nature and purpose from those in such cases as *Marchetti* v. *United States*, 390 U.S. 39, and *Haynes* v. *United States*, 390 U.S. 85, the challenge asserted here is plainly premature and not ripe for judicial review. The individual appellants who claim to be affected by the operation of Title II made no allegation in their complaint that compliance with the Act would require them to incriminate themselves and none of the other complainants raised such a claim. "The privilege against self-incrimination is one which normally must be claimed [only] by the individual who seeks to avail himself of its protection" *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 107. Appellants' reliance on *Boyd* v. *United States*, 116 U.S. 616, is misplaced. "In *Boyd*, production had been ordered, objected to, and, the Court held, unconstitutionally compelled. *There is*

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sides testified that such information would be of "great help in our efforts to stop smuggling of narcotics into the United States and our general efforts against organized crime." House Hearings, *supra*, p. 58.

nothing in the case which justifies advisory adjudication of self-incrimination questions prior to the time when the demand for information has been, at the least, made and resisted." Communist Party, supra, 367 U.S. at 110 (emphasis added).

CONCLUSION

The order of the district court should be affirmed insofar as it denied the injunctive relief sought by the appellants.

Respectfully submitted.

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May 1973.

APPENDIX A

Tax-related Statutes and Regulations Requiring Recordkeeping or Reporting

Sections 1.162–17 and 1.274–5 of the Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.) (employers must keep records of payments for employee travel and entertainment expenses);

Section 1.521–1 of the Regulations (cooperative must keep records of patronage dividends allocable to patrons);

Section 1.857–6 of the Regulations (real estate investment trusts must keep records of shareholders who refuse to submit certain statements);

Sections 1.1361–10, 1.1361–14, 1.1375–4 and 1.1375–6 of the Regulations (small business corporations must keep several types of records respecting their shareholders);

Sections 1.1441–6, 1.1461–1 and 1.1461–2 of the Regulations (payors must keep withholding records of payments to nonresident aliens);

Section 31.3401(a)–1 of the Treasury Regulations on Employment Tax (1954 Code) (26 C.F.R.) (employers must keep records of sick pay to employees);

Section 6001 of the Internal Revenue Code of 1954 and Section 31.6001–5 of the Treasury Regulations on Employment Tax (employers must keep records of income tax withholding);

Section 49.4253–11 of the Treasury Regulations on Facilities and Services Excise Tax (1954 Code) (26 C.F.R.) (telephone companies must keep records of communications taxes paid by customers);

Sections 42.4292–1(b) and 49.4261–6(e) of the Treasury Regulations on Facilities and Services Excise Tax (common carriers must keep records of tax payments of customers);

Section 45.4804–10 of the Treasury Regulations on Miscellaneous Stamp Tax (1954 Code) (26 C.F.R.) (manufacturers of white phosphorous matches must keep records of names of customers);

Section 147.8–4(d) of the Temporary Treasury Regulations under the Interest Equalization Tax Act (1954 Code) (26 C.F.R.) (custodians and nominees must keep records of owners of foreign stock or debt obligations);

Section 173.15 of the Treasury Regulations on Returns of Substances, Articles, or Containers (1954 Code) (26 C.F.R.) (sellers of materials used for producing distilled spirits must maintain records);

Section 6041(a) of the Code (businesses required to report certain income payments to third parties);

Section 6042 of the Code (corporations must report certain dividend payments made to third parties);

Section 6044 of the Code (cooperatives must report patronage dividend payments);

Section 6045 of the Code (brokers may be required to report customers' gains and losses);

Section 6049 of the Code (banks must report payments of interest made to depositors, etc.).

APPENDIX B

Form **4683** (Rev. Nov. 1971)
Department of the Treasury
Internal Revenue Service

U.S. Information Return on Foreign Bank, Securities, and Other Financial Accounts

To Attach to your tax return.

For the calendar year 19..... or other taxable year beginning ..... 19....., and ending ..... 19....

Complete this form showing your relationship during the taxable year to one or more bank, securities or other financial accounts in foreign countries. Use additional sheets if necessary.

Name(s) as shown on return	Tax identifying number (Social security number or employer identification number if other than individual)	Check type of return ☐ Individual ☐ Partnership ☐ Corporation ☐ Small business corporation ☐ Fiduciary

NOTE: Ownership of 50% or less of the stock of any corporation which owns one or more foreign accounts is not a "financial interest" in those accounts and need not be reported by the shareholder. Accounts in a U.S. military banking facility operated by a U.S. financial institution are not foreign accounts and need not be reported.

If you wish, you may also submit any other information or explanation not required by this form concerning your interest in or authority over an account.

PART I Check all appropriate boxes. See instruction F for definition of "financial interest." Use additional sheets if necessary.

1. ☐ I had signature authority or other authority over one or more foreign accounts, but I had no "financial interest" in such accounts (see instruction F). Indicate for those accounts:
   Name and tax identifying number (if any) of each owner .....
   Address of each owner .....
   (Do not complete Part II for these accounts.)

2. ☐ I had a "financial interest" in one or more foreign accounts, but the total maximum value of those accounts (see instruction H) did not exceed $10,000 at any time during the taxable year. (If you checked this box, do not complete Part II.)

3. ☐ I had a "financial interest" in 25 or more foreign accounts. (If you checked this box, do not complete Part II.)

4. ☐ I had a "financial interest" in less or more but fewer than 25 foreign accounts, and the total maximum value of those accounts (see instruction H) exceeded $10,000 during the taxable year. (If you checked this box, complete Part II.)

PART II Complete this part ONLY if you checked Item 4, and provide information in Items 5 through 10 for each account. Please use a separate Form 4683 for each account or use your own schedule to provide this information.

To avoid duplicate reporting on accounts owned by a corporation, partnership, or trust required to file this form, you may follow the procedure in instruction J by checking this box ☐ and completing the statement on the back of this form.

5. Name in which account is maintained	6. Name of bank or other person with whom account is maintained
7. Number and other account designation, if any	8. Address of office or branch where account is maintained

9. Type of account. (If not certain of English name for the type of account, give the foreign language name and describe the nature of the account. Attach additional sheets if necessary.)
   ☐ Savings, demand, or checking ☐ Securities ☐ Other (specify) .....

10. Maximum value of account (see instruction H)
    ☐ Under $50,000 ☐ $50,000 to $100,000 ☐ Over $100,000 ☐ Unable to determine (attach explanation)

Instructions

A. Who Must File a Return.—Each United States person who has a financial interest in or signature authority or other authority over a bank, securities, or other financial account in a foreign country at any time during a taxable year, must report that relationship for each taxable year. Do this by checking the appropriate box on the Form 1040, 1041, 1065, 1120, 1120L, 1120M, or 1120S you file for the taxable year and by filing with that return an information return on Form 4683 for that year.

B. United States Person.—The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, and (4) a domestic estate or trust.

C. Account in a Foreign Country.—A "foreign country" includes all geographical areas located outside the United States, its possessions, and Puerto Rico.

Report any account maintained with a branch, agency, or other office of a bank (except a military banking facility as defined in instruction D) or broker or dealer in securities that is located in a foreign country, even if it is a part of a United States bank or other institution. Do not report any account maintained with a branch, agency, or other office of a foreign bank or other institution that is located in the United States, its possessions, or Puerto Rico.

D. Military Banking Facility.—Do not consider as an account in a foreign country an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution un-

der designation by the United States Treasury to serve U.S. Government installations abroad, even if the United States military banking facility is located in a foreign country.

E. Bank, Securities, or Other Financial Account.—The term "bank account" means a savings, demand, checking, deposit, loan, or any other account maintained with a person engaged in the business of banking. It includes certificates of deposit.

The term "securities account" means an account maintained with a person who buys, sells, holds, or trades stock or other securities for the benefit of another.

The term "other financial account" means any other account maintained with any person who accepts deposits, exchanges or transmits funds, or acts as a broker or dealer for future transactions in any commodity on (or subject to the rules of) a commodity exchange or association.

F. Financial Interest.—A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in either of the following two paragraphs:

(1) A United States person has a financial interest in each account for which he is the owner of record or has legal title, whether the account is maintained for such person's own benefit or for the benefit of others including one or more United States persons. If an account is maintained in the name of two persons jointly, or if several persons each own a partial interest in an account, each of those United States persons has a financial interest in that account.

(2) A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the voting stock or more than 50 percent of the total value of shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income); or (d) a trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets, or from which such person receives more than 50 percent of the current income.

G. Signature or Other Authority Over an Account.—

Signature Authority.—A person has signature authority over an account if he can control the disposition of money or other property in it by delivery of a document containing his signature (or his signature and that of one or more other persons) to the bank or other person with whom the account is maintained.

Other authority exists in a person who can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means.

H. Account Valuation.—For items 2, 4, and 10, the maximum value of an account is the largest amount of currency and non-monetary assets that appears on any quarterly or more frequent account statement issued for the applicable calendar year. If periodic account statements are not so issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the taxable year. Convert foreign currency by using the official exchange rate at the end of the taxable year. In valuing currency of a country that uses multiple exchange rates, use the rate which would apply if the currency in the account were converted into United States dollars at the close of the taxable year.

The value of stock, other securities or other non-monetary assets in an account reported on Form 4683 is the fair market value at the end of the taxable year, or if withdrawn from the account, at the time of withdrawal.

For purposes of items 2 and 4, if you had a financial interest in more than one account, each account is to be valued separately in accordance with the foregoing two paragraphs.

If you had a financial interest in one or more but fewer than 25 accounts, and you are unable to determine whether the maximum value of these accounts exceeded $10,000 at any time during the taxable year, check Item 4 (do not check Item 3) and complete Part II for each of these accounts.

I. United States Persons with Only Authority Over but No Interest in an Account.—Except as provided in the following paragraph, you must state the name, address, and tax identifying number (if any) of each owner of an account over which you had authority, but if you check Item 3 for more than one account of the same owner, you need identify the owner only once.

If you check Item 1 for one or more accounts in which no United States person had a financial interest, you may state on the first line of this Item, in lieu of supplying information about the owner, "No U.S. person had any financial interest in the foreign accounts." This statement must be based upon the actual belief of the person filing this form after he has taken reasonable measures to ensure its correctness.

If you check Item 3 for accounts owned by a domestic corporation and its domestic and/or foreign subsidiaries, you may treat them as one owner and write in the space provided, the name of the parent corporation, followed by "and related entities," and the tax identifying number and address of the parent corporation.

J. Avoiding Duplicate Reporting.—If you had a financial interest (as defined in instruction F(2)(b), (c) or (d)) in one or more accounts identified in Item 4 which are owned by a domestic corporation, partnership or trust which is required to file Form 4683 with respect to these accounts, in lieu of completing Items 5 through 10 for each such account you may check the box in the introduction to Part II and fill in the statement below.

K. Providing Additional Information.—Any person checking one or more items of Part I of this form, when requested by the Internal Revenue Service, shall provide information concerning each account reported in Part I that is necessary to determine such person's Federal income tax liability.

L. Penalties.—For criminal penalties for failure to file a return or to supply information, and for filing a false or fraudulent return, see sections 7203 and 7206 of the Internal Revenue Code.

Statement (Pursuant to Instruction J) Relating to a "Financial Interest" in Foreign Accounts Owned by a Domestic Corporation, Partnership or Trust

I had a "financial interest" in one or more foreign accounts owned by a domestic corporation, partnership or trust which is required to file Form 4683.

Name and tax identifying number of each such corporation, partnership or trust .....

Address of each such corporation, partnership or trust .....

(Do not complete Items 5 through 10 on the front of this form for these accounts.)

APPENDIX C

Form **4790**
(April 1972)
Department of the Treasury
Internal Revenue Service

Report of International Transportation of Currency or Monetary Instruments

Date of currency or monetary instrument activity ..... 19..

This form is to be filed with the Bureau of Customs

PART I Person Transporting, Mailing, Shipping, or Receiving a Monetary Instrument
(Items 5 through 11 are applicable to alien individuals only)

1. Name (last or family, first, and middle) (if business show business name)
2. Identifying number (see instructions)
3. Check whether the currency or monetary instrument was:
   (a) ☐ Received
   (b) Shipped or mailed:
   ☐ Into the U.S.
   ☐ From the U.S.
   (c) Carried by traveler (check applicable block and enter city):
   ☐ Entering the U.S.— City
   ☐ Leaving the U.S.— City
4. Permanent address in United States or abroad
5. Address while in the United States
6. Date of birth (month, day, and year)
7. Alien registration card number, if any
8. VI-s date
9. Place United States visa was issued
10. Of what country are you a citizen or subject
11. Passport number and country
12. Were you acting as an agent, attorney, or in other capacity for anyone in this currency or monetary instrument activity? ☐ Yes ☐ No
If "Yes," please complete the following:
(a) Name of person in whose behalf you are acting
(b) Complete address of that person
(c) Business activity, occupation or profession of that person

PART II Currency and Monetary Instrument Information (See Instructions)

13. Type and amount of currency and/or monetary instruments
   (a) ☐ Coins (specify amount) $
   (b) ☐ Currency (specify amounts)
   (c) ☐ Stamps (specify type and amount)
   (d) Total amount (add lines (a), (b) and (c)) $
14. If other than United States currency is involved, please complete the following:
   (a) Currency name
   (b) Country
   (c) Equivalent in United States dollars (specify amount) $
15. Name of person from whom the currency or monetary instrument was received (to be completed by recipients only)
16. If the currency or monetary instrument was mailed, shipped, transported or carried, please complete the following:
   (a) Method of shipment
   (b) Name of transporter or carrier

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

Sign Here ▶ _____
Signature

_____ _____
Title (Owner, etc.) Date

Instructions

This report is required by Treasury Department regulations (31 Code of Federal Regulations 103).

Who Must File.—Beginning July 1, 1972, each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures or requests it to be done by a financial institution or any other person. A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported. Also each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed shall make a report.

Exceptions.—The following persons are not required to file reports: (1) a Federal reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (4) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (5) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (6) a traveler's check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, nor by (7) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign banks.

When and Where to File:

A. Recipients.—Each person who receives currency or other monetary instruments shall file Form 4790, within 30 days after receipt, with the Customs officer in charge at any port of entry or departure or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226.

B. Shippers or Mailers.—If the currency or other monetary instruments did not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226.

C. Travelers.—Travelers shall file Form 4790 at the time of entry into the United States or the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or other monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any Internal Revenue or Bureau of Customs office.

Penalties.—Civil and criminal penalties are provided for failure to file a report, supply information, and for filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See sections 103.47, 103.48 and 103.49 of the regulations.

Definitions

Bank.—Each agent, agency, branch or office within the United States of a foreign bank and each agency, branch or office within the United States of any person doing business in one or more of the capacities listed:

(1) a commercial bank or trust company organized under the laws of any state or of the United States;

(2) a private bank;

(3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;

(4) an insured institution as defined in section 401 of the National Housing Act;

(5) a savings bank, industrial bank or other thrift institution;

(6) a credit union organized under the laws of any state or of the United States; and

(7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Foreign Bank.—A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities.—A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Identifying Number.—Individuals should enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number.

Investment Security.—An instrument which: (1) is issued in bearer or registered form; (2) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; (3) is either one of a class or series or by its terms is divisible into a class or series of instruments; and (4) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Monetary Instruments.—Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or otherwise in such form that title thereto passes upon delivery. The term does not include bank checks made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

Person.—An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

U.S. GOVERNMENT PRINTING OFFICE: 1979—O-302-982